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A Constitutional Survey

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THE BRITISH COMMONWEALTH

A Constitutional Survey

by

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with the aid of the Research Staff of the Foreign Policy Association

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INTRODUCTION

ALTHOUGH the Imperial Conferences of 1926 and 1930 established a new basis of equality for the states comprising the British Commonwealth of Nations,[1] certain fundamental problems of British-Dominion relations remain unsolved. The absence of a final solution was revealed by the policies which Eamon de Valera, head of the Irish Free State, inaugurated after he came to power in March 1932, and by the Imperial Economic Conference at Ottawa in August 1932. These events tested in different ways the extent to which the Dominions are genuinely free and, if they are, whether their freedom will lead to intensified national development or closer collaboration with Great Britain in a British league of independent states.

Neither the Anglo-Irish controversy[2] nor the Ottawa Conference[3] gave a final answer to these questions. Both were marked by the evolution of two well-defined conflicting tendencies—Dominion nationalism and Imperial collaboration. Moved by the powerful drive of national consciousness, which played so large a part in the movement for Dominion autonomy, the Free State asserted new claims to independence, and at Ottawa the Dominions successfully opposed a proposal for the creation of a centralizing Conference Secretariat. Meanwhile, the tendency of the Dominions to cooperate closely with Great Britain, if permitted to do so freely, was shown at the Ottawa Conference. The agree-

1. These states are: the United Kingdom of Great Britain and Northern Ireland, Canada, Newfoundland, Australia, New Zealand, South Africa and the Irish Free State.

2. Cf. Wilbur Laurent Williams, "Great Britain and the Irish Free State," *Foreign Policy Reports*, Vol. VIII, No. 9, July 6, 1932.

3. Cf. Maxwell S. Stewart, "The Ottawa Conference," *Foreign Policy Reports*, Vol. VIII, No. 21, December 21, 1932.

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ments reached there strengthened the widely held view that the British Commonwealth is a special group of states whose relations are subject to internal rather than international law. For example South Africa, which had negotiated a most-favored-nation treaty with Germany in 1928, decided in 1932 that it need not extend to Germany the advantages granted its fellow-Commonwealth states at Ottawa.[4]

Confusion regarding the real state of British-Dominion relations has been increased by the failure of three of the Dominions—Australia, New Zealand and Newfoundland—to adopt the Statute of Westminster of 1931. In the case of Australia this failure is explained by the difficulties which the states and the federal government have experienced in defining their interrelations under the provisions of the Statute; in New Zealand and Newfoundland a genuine lack of desire for any further weakening of ties with Great Britain appears to be the principal reason for non-adoption of the Statute. Even Canada, South Africa and the Irish Free State, where the Statute is now law, regard it with little enthusiasm, probably due to agreement with the sentiment expressed by Mr. J. H. Thomas, British Secretary of State for the Dominions, when introducing the Statute in the House of Commons: "Many would have been content to allow the present practice to remain as a convention rather than to crystallize it by law." Thus Mr. Thomas emphasized, probably correctly, that British-Dominion relations are essentially based on flexible usage which permits easy and, if need be, rapid change—in short, that these relations are dynamic, not static.

BRITISH-DOMINION RELATIONS—1867-1926

The status of the self-governing communities within the British Empire has been a matter of debate since the British North America Act of 1867 laid the foundation for a united Canada.[5] For nearly three decades prior to this Act—ever since the Durham Report of 1839 recommended the union of Quebec and Ontario under responsible government—the prevailing British view was that eventually the overseas colonies would grow to nationhood and then separate from the Mother Country. The European wars of the 1860's and 70's, however, coupled with the growth of nationalism and militarism on the Continent, led the British government to place a new value on the colonies as sources of raw materials and as potential allies. Meanwhile, Canadian fears of American aggression, which led to speedy federation after 1867, and Australian fears of French and German encroachments in the south Pacific in the 1880's, which led to a growing sentiment for Australian federation, had the effect of enhancing the military and naval value of their connection with Great Britain. At the same time, however, these events created a demand on the part of the interested colonial governments for either a measure of autonomy in foreign affairs or some participation in the formulation of British foreign policy, or both.[6]

Consequently, beginning about 1868, when the Royal Colonial Institute was founded, there was a vigorous movement in both Great Britain and the overseas colonies to find an agreed procedure for dealing with the fundamental problem of reconciling a large measure of autonomy on the part of the colonial governments with a considerable degree of unity in imperial affairs. The principal practical problems were at what point to draw the line—what powers to regard as colonial, what imperial;[7] and how to draw the line—hard and fast by means of constitutional imperial federation, or loose and flexible through largely voluntary cooperation. These problems engaged the attention of a series of conferences between Great Britain and the overseas governments from 1887 to 1926.[8]

As a result of the prompt and active assistance which the Dominion governments gave Great Britain in the World War,[9] their claim to a position of equality within the British Empire was greatly strengthened. This involved a recognition of their right to a more direct voice in the conduct of imperial foreign affairs, as well as further freedom in the conduct of their own foreign relations, and a clear recognition of their domestic autonomy.

Although the war prevented the summoning of the Imperial Conference scheduled for

4. *The Round Table* (London), No. 90, March 1933, p. 450.

5. For an excellent survey of political developments in the self-governing British states and of their relations with Great Britain from their foundation to the end of the World War, cf. H. Duncan Hall, *The British Commonwealth of Nations* (London, Methuen and Company, 1920).

6. Canada, for example, has frequently sought autonomy only, not wishing to share in imperial foreign policy because unwilling to assume responsibility. Australia, however, has generally sought a free hand in certain directions while insisting on participation in British foreign policy in others, particularly in the Pacific area. Cf. Richard Jebb, *The Empire in Eclipse* (London, Chapman and Hall, 1926), p. 32-82.

7. The Durham Report of 1839 recommending responsible government for Canada had proposed that certain matters, among them trade and foreign relations, be reserved to the authority of the British Parliament.

8. For a review of the conferences from 1887 to 1918 inclusive from the point of view of the conflict of dominion autonomy versus imperial unity, cf. Hall, *The British Commonwealth of Nations*, cited. The conferences of 1921 and 1923 are briefly treated in this report.

9. An Imperial General Staff was created in 1907 by the British government to coordinate organization, equipment and training, and in 1909 a special conference on defense agreed upon unity of command in case of war and set up a permanent Committee of Imperial Defense. (Hall, *British Commonwealth of Nations*, cited, p. 126-129.) The practical value of these arrangements was demonstrated during the World War. An estimate made shortly after the war placed the contribution of the Dominions in man power at 1,500,000 and the financial contribution (including capitalized cost of war pensions) at £862,434,600—approximately $4,300,000,000. (*Ibid.*, p. 158-159.)

1915, in December 1916 the newly formed coalition government of David Lloyd George invited the Dominion Prime Ministers to an Imperial War Conference. This body resolved that constitutional relations within the Empire should be the subject of a special conference to be held as soon after the war as possible, and declared that recognition must be given to the right of the Dominions and India to a more adequate voice in foreign policy and relations.[10]

No such conference as that proposed in 1917 was ever held. Instead, a Conference of Prime Ministers at London in 1921 decided that events during the war years had securely established the position of the Dominions as virtual equals of the Mother Country in foreign affairs.[11] Events soon afterwards—particularly the claim of the British government that its signature of the Treaty of Lausanne in 1923 bound the Dominions although they were not represented at the peace conference with Turkey—revived this issue.[12] As a result, the Imperial Conference of 1923 adopted a resolution regarding the negotiation, signature and ratification of treaties designed to secure to the Dominions their rights in this matter.[13]

In addition to problems concerning foreign affairs—which were raised anew by the unwillingness of the Dominions to accept the European obligations undertaken by Great Britain in the Locarno Pact of 1925[14]—the persistence of national feeling in the Irish Free State and South Africa were factors which indicated that a constitutional conference between Great Britain and the Dominions would be desirable. Furthermore, a constitutional crisis arose in Canada in the summer of 1926 over the relations of the Imperial Governor-General to the Prime Minister.[15] Consequently the Imperial Conference which convened at London on October 19, 1926 had inter-imperial relations prominently on its agenda.

10. Imperial War Conference, 1917, *Minutes of Proceedings* (London, H. M. Stationery Office, 1918), Cmd. 8566, p. 5. An Imperial War Cabinet of which the Dominion Prime Ministers were members remained in continuous session from the Armistice until the signing of the Treaty of Versailles in June 1919. To this treaty the Dominions and India attached separate signatures and in its drafting, as well as in the formulation of a covenant for the League of Nations, Dominion representatives played a considerable rôle.

11. Conference of Prime Ministers, 1921, *Summary of Proceedings* (London, H. M. Stationery Office, 1921), Cmd. 1474, Resolution XIV.

12. A. Berriedale Keith, *Speeches and Documents on the British Dominions, 1918-1931* (London, Oxford University Press, 1932), p.. 322-341. (Hereinafter cited as *Speeches and Documents on the Dominions.*)

13. Imperial Conference, 1923, *Summary of Proceedings* (London, H. M. Stationery Office, 1923), Cmd. 1987, p. 13-16. This resolution provided that in the negotiation of any treaty affecting more than one part of the empire, all governments concerned should be consulted; stipulated that all such governments should be represented in negotiations and should separately sign the resulting treaty; and established, by inference, the principle observed in regard to the Treaty of Versailles that final imperial ratification was dependent upon prior parliamentary approval of the treaty in each of the interested states.

14. Keith, *Speeches and Documents on the Dominions*, cited, p. 352-371.

THE 1926 IMPERIAL CONFERENCE

In their opening speeches at the 1926 Imperial Conference, all but one of the Dominion Prime Ministers[16] stressed the necessity of reaching a "clearer understanding of our political relationships, including the problem of foreign policy in its several aspects."[17] Such an understanding had become "essential" in the opinion of the New Zealand Prime Minister,[18] while General Hertzog, on behalf of South Africa, declared that his government wanted "in principle, unrestrained freedom of action to each individual member of the Commonwealth; in practice, consultation with a view to co-operative action wherever possible."

As a result of the seriousness with which the Dominions viewed their position an Inter-Imperial Relations Committee, composed chiefly of Prime Ministers, was appointed on October 25. The report of this Committee, popularly known as the Balfour Report, was adopted unanimously by the Conference on November 19.[19]

The Balfour Report definitely settled the issue of federation versus cooperation. "Nothing would be gained," it stated, "by attempting to lay down a Constitution for the British Empire."[20] Nevertheless, it recorded that a stage of full development had been reached in that part of the Empire composed of self-governing communities;[21] the position and mutual relations of these communities might "readily be defined," it declared, as follows:

> *They are autonomous Communities within the British Empire, equal in status, in no way subordinate one to another in any aspect of their do-*

15. The question at issue was whether the Governor-General had exceeded his authority in refusing a dissolution of the Canadian Parliament at the request of the Prime Minister. Shortly afterwards a dissolution was forced and in the ensuing election the Prime Minister who declared the Governor-General's action unconstitutional was returned to power. The 1926 Imperial Conference made impossible the recurrence of a similar situation. *Ibid.*, Introduction, xxii-xxiii; p. 149-160.

16. "We are entirely satisfied with the status under which we exist and we do not even require to be consulted as to questions of foreign policy," declared Prime Minister Monroe, of Newfoundland. Imperial Conference, 1926, *Appendices to the Summary of Proceedings* (London, H. M. Stationery Office, 1926), Cmd. 2769, p. 26.

17. Statement of Prime Minister Mackenzie King of Canada. *Ibid.*, p. 16.

18. *Ibid.*, p. 22.

19. Imperial Conference, 1926, *Summary of Proceedings* (London, H. M. Stationery Office, 1926), Cmd. 2768; "Report of the Inter-Imperial Relations Committee," p. 13-20. (Hereinafter cited as *Balfour Report.*)

20. *Balfour Report*, cited, p. 14.

21. The 1917 resolution in favor of a constitutional conference anticipated the inclusion of India as well as the Dominions. While India was represented on the Balfour Committee, the pronouncement regarding status (cf. p. 29) did not apply to it, nor was its position affected by any of the major recommendations of the Committee. (*Ibid.*, p. 15.)

Although Southern Rhodesia attained responsible government in 1923, it is still subordinate to Great Britain in some aspects of its domestic and external affairs, and hence does not have the status of a Dominion. Representatives of its government attended some of the meetings of the 1930 Imperial Conference, however, and delegates from Southern Rhodesia were present as "observers" at the Imperial Economic Conference at Ottawa in

mestic or external affairs, though united by a common allegiance to the Crown, and freely associated as members of the British Commonwealth of Nations.[22]

The Balfour Report complemented, if it did not qualify, its declaration on status by the further statement that:

> The principles of equality and similarity, appropriate to *status*, do not universally extend to function. Here we require something more than immutable dogmas. . . . To deal with questions of diplomacy and questions of defense, we require also flexible machinery . . . which can, from time to time, be adapted to the changing circumstances of the world.[23]

In short, the problem with which the Balfour Report dealt was the old fundamental one of reconciling the conflicting claims of Dominion autonomy and imperial unity. The significant accomplishment of the Balfour Committee was the formulation of a declaration recognizing autonomy by "equality of status," and maintaining unity by the device of "common allegiance to the Crown," and by insuring intergovernmental cooperation.

The Balfour Committee recognized that a formula was not enough, but in view of the short time at its disposal it did not attempt to set forth a complete program for reconciling the existing imperial structure with the declaration of equality. To meet the more pressing issues raised by the Dominions, however, it recommended changes in the King's title and in the position of Dominion Governors-General, proposed alterations in existing British statutes concerning both Dominion and merchant shipping legislation, and advised agreement on the conditions to govern appeals from Dominion courts to the Judicial Committee of the Privy Council—a body sitting in London and predominantly English in composition.

Since much of this program would involve the repeal or amendment of existing statutes, the Balfour Committee contented itself with suggesting the general principles to be observed and recommended the convening of a special sub-conference on the operation of Dominion legislation and merchant shipping legislation. This conference met in London in 1929. As a result of the subsequent adoption of its recommendations by the 1930 Imperial Conference and the enactment in 1931 of the Statute of Westminster by the British Parliament, the constitutional relations of Great Britain and the self-governing Dominions have been defined to a greater extent than theretofore.

Although the chief force leading to change was the insistence, in varying degrees, of the major Dominions that their autonomy be recognized definitively, it will be convenient in considering the present constitution of the British Commonwealth to deal first with the measures taken to maintain unity and to strengthen the machinery of cooperation, and second with those designed to insure autonomy.

IMPERIAL UNITY IN THE BRITISH COMMONWEALTH

POSITION OF THE KING

The Balfour declaration that the Commonwealth states are united by a common allegiance to the Crown emphasizes the central position of the King as the outward and visible symbol of unity.[24] To carry out this principle, as well as to express more faithfully the position created by the establishment of the Irish Free State in 1922, the British Parliament in 1927 authorized a change in the King's title,[25] which now is: "George V., by the Grace of God, of Great Britain, Ireland, and the Dominions Beyond the Seas, King, Defender of the Faith, Emperor of India." Finally, the preamble of the Statute of Westminster recorded that since the King's title was now a matter of common concern to all the Commonwealth states, no change should be made without the concurrent approval of the Dominion parliaments.[26]

THE RIGHT OF SECESSION

Whether the unity represented by common allegiance to a common King prevents legal secession of a Commonwealth state is a question which arose even before enactment of the Statute of Westminster. When General Hertzog, the South African Prime Minister and Nationalist leader, returned from the 1926 Imperial Conference he declared that the principles of equality of status and of

1932. At the latter conference Southern Rhodesia was represented on most of the committees which were set up and negotiated trade agreements with Great Britain and Canada. Imperial Economic Conference, 1932, *Report of the Conference* (Ottawa, F. A. Acland, 1932), p. 16, 148.

22. *Balfour Report*, cited, p. 14. Italics in the original.

23. *Ibid.*, p. 14-15.

24. For a discussion of the Crown in this and other aspects, cf. William Y. Elliott, *The New British Empire* (New York, Whittlesey House, 1932), p. 36-37; P. J. Noel Baker, *The Present Juridical Status of the British Dominions in International Law* (London, Longmans, Green and Company, 1929), p. 213-228.

25. *17 Geo. V., chap. 4.* The proclamation altering the royal style and titles was issued on May 13, 1927. Cf. Keith, *Speeches and Documents on the Dominions*, cited, p. 171-172.

26. *22 Geo. V., chap 4.* Hereinafter cited as *Statute of Westminster.* A preambulatory clause is not law, but it is, as one commentator observes, "a solemn declaration of constitutional practice." (Elliott, *The New British Empire*, cited, p. 53.) Mr. Stanley Baldwin recently observed that "since the passage of the Statute of Westminster the one indissoluble link [holding together the British Empire] is the Crown." (*The Times*, London, December 21, 1932.)

Before 1927 the royal title has been: "George V., by the Grace of God, of the United Kingdom of Great Britain and Ireland and of the Dominions Beyond the Seas, King, Defender of the Faith, Emperor of India." This title had been proclaimed under the Royal Titles Act of 1901. Cf. *Balfour Report*, cited, p. 15.

free association were a recognition of the right of South Africa to secede from the Commonwealth. In 1930, however, General Smuts, leader of the Opposition, called attention to the clause in the preamble of the proposed Statute of Westminster requiring concurrence of the Dominions for any alteration of the royal style and titles and declared that acceptance of this clause "ends all question of secession."[27] This view was vigorously opposed by the aroused Nationalists, who added a proviso to their formal approval of the report of the 1929 conference on legislation declaring that the preamble in question "shall not be taken as derogating from the right of any member of the British Commonwealth to withdraw therefrom."[28] While no other Dominion took similar action, assent to the South African contention was expressed by members of both the Canadian and Irish Free State parliaments.[29]

THE IMPERIAL CONFERENCE

While the King is the nominal tie that binds and hence the symbol of unity, the effective means of cooperation between the Commonwealth states is through the quadrennial Imperial Conference,[30] supplemented by more frequent sub-conferences on matters of special common concern and by a few permanent or semi-permanent agencies such as the Imperial Defense Committee.[31]

The Imperial Conference is neither an executive nor a legislative body; it is merely an assembly of representatives of governments.[32] The matters with which it deals concern two broad fields of inter-state relations: foreign affairs and the relations, in varied spheres, between the Commonwealth states. The British Foreign Secretary generally takes the opportunity afforded by the Conference to explain to the Dominion representatives the developments of imperial policy in the recent past and to outline the problems to be faced in the near future and the policy which it is proposed to follow. In shaping this policy it is presumed that the opinion of the Dominion representatives will often be sought and will carry weight. In accord with the principle that the Dominions cannot be bound actively by acts of the British government regarding which they have not been consulted, active consultation between the British and Dominion governments takes place from time to time through ordinary channels as specific problems arise. Representatives of the British and Dominion governments also frequently confer at Geneva on foreign affairs before and during regular sessions of various League bodies; such conferences, however, are informal.

The main business of an imperial conference concerns the mutual relations of the Commonwealth states and their common problems. The decisions of the conference on these matters are expressed in conference resolutions. In so far as these resolutions deal with matters governed by usage, they become effective at once since they express the agreement of the Commonwealth governments. Conference resolutions have no legal status, however; consequently, when they propose changes which involve alterations in existing laws they require implementation by the passage of agreed legislation in each Commonwealth parliament.

Since usage rather than law dominates the inter-relationship of the Commonwealth states, the Imperial Conference is a powerful body and its resolutions are of great importance.[33] On resolutions dealing with constitutional questions, unanimity is obviously essential if a proposed change is to be effective throughout the Commonwealth, while it is generally imperative on proposals for statutory change since uniform laws throughout the Commonwealth can be secured only with the consent of all Commonwealth governments.[34] Unanimity is not easily attained, however; and, even when it is, strong opposition to proposed changes may develop in one or more of the Dominions, while a subsequent general election may result in the formation of a government which does not consider itself bound by the pledges of its predecessors.[35]

27. Empire Parliamentary Association (London), *Journal of the Parliaments of the Empire*, Vol. XI, No. 3, July 1930, p. 791.

28. *Ibid.*, p. 791-800. When this amendment was adopted, General Hertzog declared that he would secure an express recognition from the Imperial Conference of 1930 of a Dominion's right of secession. No reference to secession occurs in the report of the Conference, however, although General Hertzog declared on his return to South Africa that the Conference had registered the reservation on this point passed by the South African Parliament. (Cf. Elliott, *The New British Empire*, cited, p. 54-55.)

29. *Journal of the Parliaments of the Empire*, cited, p. 653 *et seq.*; Keith, *Speeches and Documents on the Dominions*, cited, p. 231-255. While the question of secession was first raised by South Africa, it is in the Irish Free State that it has now become a live issue. Cf. Williams, "Great Britain and the Irish Free State," cited.

30. A. Berriedale Keith, *Dominion Autonomy in Practice* (London, Oxford University Press, 1929), p. 72-80; Baker, *Present Juridical Status of the British Dominions*, cited, p. 241-243.

31. Keith, *Speeches and Documents on the British Dominions*, cited, p. 372-377. This Committee, however, is purely a British and not an intergovernmental body.

32. In short, the assembled Prime Ministers at the Imperial Conference are not responsible either to each other or to a common electorate.

33. Elliott, *The New British Empire*, cited, p. 39-41. "For purposes of working out the constitutional basis of 'free association' and 'equality of status' the Imperial Conference . . . has become the constituent organ of a confederation, in fact, if not in law." (*Ibid.*, p. 40.)

34. On the subject of uniformity and conflict of laws throughout the Commonwealth, cf. p. 32. On many matters usage alone is adequate.

35. In general, however, constitutional agreements accepted by one government are observed by its successor.

DOMINION AUTONOMY

Despite the fact that usage rather than law plays the principal rôle in determining intergovernmental relations in the British Commonwealth, when the Balfour Report was issued in 1926 a number of British and Dominion statutes still existed by which Dominion autonomy was restricted. Of these statutes the principal were the measures granting the Dominion Constitutions (all of which took the form of Parliamentary enactments save that of Newfoundland),[36] the Colonial Laws Validity Act of 1865, and a series of British enactments on merchant shipping and admiralty courts, chief of which were the Colonial Courts of Admiralty Act of 1890 and the Merchant Shipping Act of 1894. In addition, several powers which were originally based on the King's prerogative had been given statutory form by either British or Dominion enactment; the principal matters thus dealt with were the appointment of, and issuance of instructions to, Dominion Governors-General, the reservation of Dominion legislation for final decision by the King[37] (with the possibility that such legislation might be disallowed), and the hearing of appeals from the decisions of Dominion courts by the Judicial Committee of the Privy Council.

Most of these matters were dealt with by the special sub-conference on Dominion and merchant shipping legislation which met in London in 1929.[37a] The recommendations of this conference with regard to disallowance and reservation were adopted as resolutions by the 1930 Imperial Conference,[38] while its recommendation for a redefinition of legislative authority so as to free the Dominions from British control were given form in the Statute of Westminster of 1931. The position and powers of Dominion Governors-General were defined by Imperial Conference resolutions in 1926 and 1930;[39] the matter of judicial appeals remains unsettled.[40]

THE STATUTE OF WESTMINSTER, 1931

Of the several measures taken by the British government in collaboration with the Dominions to give substance to the 1926 declaration of "equality of status," the most important was the Statute of Westminster.[41]

First, the Statute declares that "the Parliament of a Dominion has full power to make laws having extraterritorial operation."[42] Second, the Statute declares in positive terms that a Dominion Parliament shall have the power to repeal or amend any British act (or any rule, order or regulation made under such an Act) in so far as it is part of the law of the Dominion.[43] Third, the Statute declares in negative terms that no law and no provision of any law passed by a Dominion Parliament shall be void or inoperative on the ground that it is repugnant either to the law of England or to the provisions of any existing or future British Act[44] and, conversely, that no Act of the British Parliament passed after the enactment of the Statute shall extend to a Dominion as part of the law in force in the Dominion "unless it is expressly declared in that Act that the Dominion has requested and consented to" its enactment.[45] In addition, the Statute declares that the Colonial Laws Validity Act shall no longer apply to any law made by a Dominion Parliament.[46] Fourth, the Statute provides that certain provisions of the Merchant Shipping Act, 1894, and the Colonial Courts of Admiralty Act, 1890, shall also no longer apply to a Dominion, thus leaving the Dominions free to regulate merchant shipping as they wish and to establish admiralty courts under their own laws.[47]

On the other hand, at the insistence of the states or provinces, Canada and Australia requested that the Statute preserve the existing position with regard to amendment of their constitutions; a similar reservation exists also with regard to the New Zealand Constitution. Hence it is still necessary in Canada for any constitutional amendment to be enacted in the form of an Act of the British Parliament,[48] while in Australia constitutional amendments which would alter the relations between the states and the federal government also require British Parliamen-

36. The Constitution of Newfoundland is based on a royal patent of 1832. The Irish Free State Constitution was passed in the first instance by a Free State Constituent Assembly and was later affirmed by the British Parliament.

37. In form, decision was given by the King on the advice of the Privy Council; in practice, the decision was that of the British government of the day.

37a. Great Britain, Dominions Secretary, *Report of the Conference on the Operation of Dominion Legislation and Merchant Shipping Legislation, 1929* (London, H. M. Stationery Office, 1930), Cmd. 3479. Hereinafter cited as *Report of the 1929 Conference.*

38. Cf. p. 33.

39. Cf. p. 33.

40. Cf. p. 34.

41. For a brief discussion of the Statute from the legal point of view, cf. Manley O. Hudson, "Notes on the Statute of Westminster, 1931," *Harvard Law Review*, Vol. XLVI, No. 2, p. 261-289. Another study is that of Robert A. Mackay, "Changes in the Legal Structure of the British Commonwealth of Nations," *International Conciliation*, No. 272, September 1931.

42. *Statute of Westminster*, cited, Art. 3.

43. *Ibid.*, Art. 2 (2).

44. *Ibid.*

45. *Ibid.*, Art. 4.

46. *Ibid.*, Art. 2 (1). The Colonial Laws Validity Act remains on the British statute book, however, and is applicable to all of the King's dominions save those comprised in the Commonwealth and listed in the Statute of Westminster.

47. *Ibid.*, Arts. 5 and 6. These laws are also still applicable to all British dominions save the Commonwealth states.

48. *Ibid.*, Art. 7.

tary approval.[49] The motivating force dictating these saving clauses was the desire of the subordinate governmental units in Canada and Australia to retain an avenue of appeal to London against feared encroachments on their rights and powers by the federal governments.[50]

South Africa and the Irish Free State—the two youngest of the major Dominions—are free to amend their Constitutions by purely internal action[51] as a result of the enactment of the Statute of Westminster. In the case of both states, the British government had imposed reservations to the amending power when their constitutions were adopted—the South African in 1909[52] and the Irish in 1922.[53] The South African Parliament affirmed its intention to remain bound by these reservations when requesting the British Parliament to enact the Statute of Westminster.[54] The Irish Free State government, in a letter from the president of the Executive Council, William T. Cosgrave, to Prime Minister J. Ramsay MacDonald, declared, in effect, that constitutional amendment in the Free State would continue to be made in conformity with the terms of the Anglo-Irish treaty of 1921.[55] This interpretation was rejected by the de Valera government, however, when it came to power in the Free State in March 1932.[56]

49. *Ibid.*, Arts. 8 and 9.

50. In Canada a Dominion-Provincial conference was held on April 7 and 8, 1931 at which agreement was reached on the inclusion in the Statute of Westminster (cf. Art. 7) of provisions preserving the *status quo* with respect to repeal, amendment or alteration of the Canadian Constitution and with respect to the existing division of powers between the federal and provincial governments. (Cf. Elliott, *The New British Empire*, cited, Appendix VII, p. 504-508.)

In Australia the fears of the states were even more acute than had been those of the provinces in Canada. (Cf. Keith, *Speeches and Documents on the British Dominions, 1918-1931*, cited, p. 268; *British Year Book of International Law*, 1932, New York, Oxford University Press, 1932, "The Statute and Australia," p. 116-117.) As a result Article 9 of the Statute declares that the federal government shall make no law on any matter within the authority of the Australian states and that it shall have no veto over requests by the state governments for British statutes.

Article 10 of the Statute provides that its main operative provisions shall not extend to Australia, New Zealand or Newfoundland unless adopted by the parliament of those Dominions and grants authority to the parliaments of these Dominions to revoke such adoption at their pleasure.

51. That is, without the necessity of statutory approval of constitutional amendments by the British Parliament.

52. In South Africa the Constitution provides that no amendment shall alter the native franchise in Cape Colony or affect the establishment of Dutch and English as joint official languages throughout the Union except under conditions which make such amendment extremely difficult. (*Edward VII.*, chap. 9, Art. 152.)

53. Cf. Irish Free State Constitution Act, 1922, *13 George V.*, chap. 1, confirming an Act of the same title passed on October 25, 1922 by Dáil Eireann. Article 2 (2) of the Free State act provided that the Constitution should be construed with reference to the Anglo-Irish treaty of 1921 and stipulated that any amendment not in conformity with the terms of the treaty should be void and inoperative.

54. *Journal of the Parliaments of the Empire*, cited, Vol. XII, No. 3, July 1931, p. 726-728. The resolution requested enactment of the Statute of Westminster "on the understanding that the proposed legislature will in no way derogate from the entrenched provisions of the South Africa Act, 1909."

55. Cf. Williams, "Great Britain and the Irish Free State," cited, p. 104. Mr. Cosgrave's letter was in response to a proposal sponsored by the Rt. Hon. Winston Churchill, one of the negotiators of the 1921 treaty, that a clause be added to the Statute of Westminster to make it legally impossible for the Free State to amend its Constitution otherwise than in conformity with the treaty.

UNIFORMITY OF LAW AND CONFLICTS OF LAW

A major problem which arises as a result of the new constitutional position within the British Commonwealth created by the Statute of Westminster is that of finding some means of assuring uniformity of law[57] throughout the Commonwealth where this is deemed desirable and, conversely, of preventing conflict of laws where such conflict would be considered undesirable.

The provision of the Statute permitting the British Parliament to pass laws binding upon itself and one or more of the Commonwealth states provided these states have "requested and consented to" such legislation[58] offers one way by which uniformity may be secured. Another solution—which is more likely to be utilized in view of the particularistic sentiments generally dominant in the Irish Free State and South Africa—lies in the common adoption by the United Kingdom and one or more of the Dominions of identical statutes.[59]

Since the Dominion parliaments are now free to legislate at will, diversity of laws within the Commonwealth on a given matter seems inevitable. Conflict of laws will arise, however, only in cases where two or more states have common problems with which they deal in different ways.[60] At present the tendency seems to be toward increasing diversity of laws, with the probability of increasing conflict as well, among the Commonwealth states. To define Dominion nationality, for example, the Irish Free State,

56. *Ibid.* Mr. de Valera sponsored a bill, which will come into effect on May 1, 1933, repealing the requirement that constitutional amendments and Free State laws must conform to the treaty. Cf. also, Great Britain, Dominions Secretary, *Papers Relating to the Oath of Allegiance in the Irish Free State and the Land Purchase Annuities* (London, H. M. Stationery Office, 1932), Cmd. 4056; *The Times* (London), March 2, 1933.

57. Formerly uniformity was accomplished by imperial statutes and assured by the power of disallowance and the judicial authority of the Privy Council.

58. *Statute of Westminster*, cited, Art. 4.

59. Such a procedure was recommended by the 1930 Imperial Conference with reference to a proposed British Commonwealth Merchant Shipping Act, which was to assure uniformity on certain essential points after the Dominions, under the Statute of Westminster, had gained the right to set aside the prevailing British statute of 1894. (For the text of the proposed agreement, cf. Imperial Conference, 1930, *Summary of Proceedings*, cited, p. 32-37; for conference resolution regarding the agreement, cf. *ibid.*, p. 24-26.)

In Canada a new law regulating Dominion shipping and embodying many of the 1930 proposals was introduced in the Senate on March 8, 1933. U. S. Department of Commerce, *Commerce Reports* (weekly), March 18, 1933, p. 163.

60. Long before the 1926 Imperial Conference, problems of this character had arisen. On two important matters—both affecting international relations—the self-governing colonies had been left free to follow their own policies even before the end of the nineteenth century; Canada in 1859 successfully asserted its right to impose protective tariffs, which operated principally against British imports, while the right to regulate immigration was frequently exercised by the self-governing colonies in a manner inconsistent with the immigration policy of Great Britain. On these two matters there was no general imperial legislation and no uniformity in the laws of the different Dominions.

Canada and South Africa have laws of their own[61] which are not only mutually exclusive in some cases, but conflict in certain respects with a British statute of 1914.[62] In general, conflict of laws can be settled in the same ways in which uniformity can be secured.[63]

CHANGES IN USAGE ADVANCING AUTONOMY

Three matters of concern to the Dominions in their quest for autonomy were not dealt with by the Statute of Westminster: (1) the position and powers of Dominion Governors-General; (2) reservation and disallowance; and (3) appeals from Dominions courts to the Privy Council.

Dominion Governors-General

Although by 1926 the Governor-General in the self-governing Dominions found his powers strictly limited both by usage and by the fact that he was obliged to conform to the requirements of responsible government,[64] he was still an appointee of the British government and was the chief administrative official of that government in the Dominions, as well as the personal representative of the King.[65]

The Balfour Report recommended that the Governor-General should be exclusively the representative of the Crown—not of the British government—"holding in all essential respects the same position in relation to the administration of public affairs in a Dominion" as is held by the King in Great Britain.[66] The 1930 Imperial Conference confirmed this recommendation and resolved, furthermore, that in the future the Governor-General should be appointed by the King directly on the advice of his Ministers in a Dominion, instead of on the advice of British Ministers.[67]

With the passing of the Governor-General as even a nominal agent of the British government, the question arose as to how that government should be represented in the Dominions and what should be the channel of communication between Great Britain and the Commonwealth states.[68] In 1925 Great Britain had recognized the advanced position of the self-governing Dominions by the creation of a Secretaryship of State for Dominion Affairs. This office at first was held by the same person who was Colonial Secretary, but just before the 1930 Imperial Conference the Labour government appointed a separate Dominions Secretary.[69] In the Dominions, meanwhile, relations with Great Britain and the Empire generally are customarily handled by the Minister for External Affairs—the Cabinet official who also deals with foreign relations. The Dominions are now generally represented by High Commissioners in London, while the problem of British government representation in the Dominions was solved by the appointment, after 1928, of British High Commissioners in some of the Dominions.

Disallowance and Reservation

Before 1926 every bill passed in any Dominion had to receive the King's assent and any, save bills of the Irish Free State Parliament, might be disallowed.[70] Reservation, which meant that a bill could not be assented to by the Governor-General in the King's name but had to be sent to London for final decision, was provided for in all Dominion constitutions save those of the Irish Free State and Canada.[71] In some cases reservation was discretionary; in others, compulsory; in all it has a legal basis, either implicit or explicit, in Dominion constitutions.

To settle at once any doubt regarding the existing position with respect to disallowance and reservation, the Balfour Report in 1926 declared that "it would not be in accord with the constitutional position for advice to be tendered to His Majesty's Government in the United Kingdom in any matter pertaining to the affairs of a Dominion against the views of the Government of that Dominion."[72] In conformity with this principle, the

61. To some extent this action has been motivated by a desire to secure separate representation on the Permanent Court of International Justice from that accorded Great Britain. Cf. Keith, *Dominion Autonomy in Practice*, cited, p. 21, 59; William Y. Elliott, "The Riddle of the British Commonwealth," *Foreign Affairs* (New York), Vol. 8, No. 3, April 1930, p. 457-460.

62. Elliott, *The New British Empire*, cited, p. 56.

63. Cf. p. 32.

64. In 1926 a dispute occurred in Canada on this matter. Cf. footnote 15, p. 28.

65. Keith, *Dominion Autonomy in Practice*, cited, p. 3-7; 33.

66. *Balfour Report*, cited, p. 16. Certain important powers in the field of foreign affairs are still reserved to the King. Cf. p. 35.

67. Imperial Conference, 1930, *Summary of Proceedings* (London, H. M. Stationery Office, 1930), Cmd. 3717, p. 27. The resolution declared that the only parties interested in the appointment of a Governor-General "are His Majesty the King, whose representative he is, and the Dominion concerned." Advice as to such appointment, it was further provided, should follow informal consultation of the Dominion Prime Minister with the King.

On December 2, 1930—scarcely more than two weeks later—the Australian government advised the appointment of Sir Isaac A. Isaacs, Chief Justice of Australia, as Governor-General, while on November 25, 1932 Donal Buckley, a retired Irish grocer, was appointed Governor-General of the Irish Free State on the direct advice of Eamon de Valera, president of the Free State Executive Council.

68. The Colonial, and later Imperial, Conferences gave periodical opportunity for direct communication between high officials of both the British and Dominion governments and, after 1907, between Prime Ministers.

69. *Journal of the Parliaments of the Empire*, Vol. XI, No. 3, July 1930, p. 597. The first separate Dominions Secretary was J. H. Thomas, who holds the same post in the present National government.

70. No Dominion act had been disallowed since 1873. For a statement of the position regarding the Irish Free State, cf. *Report of the 1929 Conference*, cited, p. 11.

71. Cf. *Report of the 1929 Conference*, cited, p. 15.

72. *Balfour Report*, cited, p. 17. The recommendation of the Balfour Report that Governors-General should no longer represent the British government meant the abolition of their formal power of reservation. As representative of the King, the Dominion Governor-General still formally assents to all Dominion legislation.

1929 sub-conference suggested that the Dominions amend their own constitutions to remove the statutory requirements governing reservation and sanctioning disallowance.[73] Where amendment of a Dominion constitution to achieve this purpose required an enactment by the British Parliament, the 1929 conference recorded the opinion that the British government would ask Parliament to pass the necessary legislation.[73a]

Judicial Appeals

Despite the recommendation of the Balfour Committee that some uniform set of conditions be agreed upon to govern appeals from Dominion courts to the Judicial Committee of the Privy Council—largely an English body—no progress in this direction has been reported.[74] The difficulty probably lies in the assumption on which this recommendation is based—that appeals from Dominion courts to the Privy Council should continue.[75] The Balfour Report affirmed the willingness of the British government to settle the question of the conditions governing appeals "in accord with the wishes of the part of the Empire primarily affected,"[76] but recognized implicitly that variations in these conditions could not long exist since no Dominion would be content with a position which seemed inferior to that of another.

At this time the immediate problem was that of appeals from the Irish Free State. In the Free State Constitution provision was made that the decisions of the Supreme Court should not be reviewable by "any other Court, Tribunal or Authority whatsoever";[77] but, on the insistence of the British government, it was further provided that nothing in the Constitution should impair the right of "any person" to petition the King for special leave to appeal to the Privy Council from a decision of the Supreme Court, or the right of the King to grant such a leave.[78]

As a result, several appeals have been carried from the Irish Supreme Court in the past decade against the wishes of the Free State government. Uniformly, however, the judgment of the Privy Council has been invalidated by anticipatory or subsequent Free State legislation in private cases, or has been flatly disregarded by the government in constitutional cases. Finally, in June 1932, the Privy Council refused to hear an appeal by a group of Free State citizens against an act of the government, apparently on the ground that the Free State would not participate in the appeal, and could not be obliged to do so, thus rendering futile a decision by the Council.[79]

The legal position with respect to the other members of the Commonwealth is not uniform. In Canada it is legally possible for appeals to be made to the Privy Council in all cases; in South Africa,[80] Australia[81] (and the Irish Free State), the right of appeal is limited by constitutional provisions. Furthermore, an Imperial Act of 1844 which gave statutory form to the King's prerogative right to grant appeals to the Privy Council from any of his dominions is still on the statute book. The Statute of Westminster would seem to make it possible for the Dominion governments to repeal this act in so far as its provisions apply to them.[82]

The principal Dominion objection to permitting appeal to the Privy Council is that this implies the subordination of even the highest Dominion court to what is, in principle, an English and alien body.[83] It is argued, moreover, that the delay and expense involved in an appeal to London tend to deny the "King's justice" to all but wealthy Dominion suitors, while the physical presence of the Judicial Committee in London makes this justice disproportionately available to the English litigant. Furthermore, Dominion courts are held to be the best judges of the legal position in constitutional cases, while many cases require a knowledge of Dominion conditions which is not possessed by a majority of the members of the Judicial Committee.[84] On the other hand, the Judicial

73. In one matter, however, the Dominion governments have agreed to the continuance of disallowance. So long as Dominion securities are admitted to the list of Trustee Stocks in the United Kingdom—as was made possible by the Colonial Stock Act, 1900—the British government may disallow a Dominion law which appears to alter, to the disadvantage of the stockholder, the provisions affecting the stock. *Report of the 1929 Conference,* cited, p. 12.

73a. *Ibid.*, p. 12, 15.

74. Keith, *Dominion Autonomy in Practice,* cited, p. 45-47.

75. A book dealing with this subject has just been published in England: Hector Hughes, *National Sovereignty and Judicial Autonomy in the British Commonwealth of Nations* (London, P. S. King and Son, 1933). Mr. Hughes is a member of the English and Irish Free State bars.

76. *Balfour Report,* cited, p. 19.

77. Article 66.

78. *Ibid.*

79. *The Times* (London), June 21, 1932.

80. Article 106 of the South African Constitution declares that there shall be no appeal from the Supreme Court to the King in Council, but permits appeal from the Appelate Division. Authority is given the South African Parliament to enact laws limiting the matters in respect to which appeals may be asked. South Africa Act, *9 Edward VII, Chap. 9,* Art. 106.

81. The Constitution drafted in Australia and presented to the British Parliament for enactment contained no provision for judicial appeal. A provision was inserted by the British Parliament, however, reserving the right of appeal in constitutional cases between the Australian states and the federal government and providing that the special right of the King to grant leave to appeal from a decision of the High Court should not be impaired. Commonwealth of Australia Constitution Act, *63 & 64 Victoria, Chap. 12,* Art. 74.

82. Cf. p. 31.

83. Although the Dominions can be represented on the Judicial Committee of the Privy Council since many of their Cabinet Ministers and former Cabinet Ministers are Privy Councillors who meet the requirement for membership of the Committee, few are present in London at any given time.

Committee has been declared an ideal court of appeal in constitutional cases between the states and the federal government in some of the Dominions because of the freedom of the Committee from partisan influence.[85]

DOMINION AUTONOMY IN FOREIGN RELATIONS

As a result of the Statute of Westminster and the Imperial Conference resolutions of 1926 and 1930, the Commonwealth states—among which the United Kingdom is now included—are substantially equal and autonomous in internal government and in their intergovernmental relations; that is, within the British Empire. The most striking index of their international status is the fact that all but Newfoundland are members of the League of Nations and that two of the Commonwealth states, other than the United Kingdom which is a permanent member of the League Council, have been Council members—Canada and the Irish Free State.[86] Within the Council and Assembly, moreover, the Dominion governments have frequently voted differently from Great Britain. The Commonwealth states are free to accredit their own Ministers to foreign governments—and to receive those of foreign governments.[87] They are free also to negotiate treaties, although consultation with other members of the Commonwealth has been pledged by each in case a projected treaty would affect the interests of all, or any, other members,[88] and elaborate forms have been drawn up for treaty signature.[89]

While the autonomy of the Dominions in their direct relations with the League and with foreign states is clear, the Dominion Governors-General have no authority to declare war,[90] make peace, annex territory or exercise the treaty function in the King's name, despite the fact that their powers are declared to be "essentially" the same as those of the King in the United Kingdom. These powers are retained by the Crown, and while the Crown exercises them on the advice of the Dominion Ministers, usage demands that on vital matters of this character there should be consultation among the Commonwealth states, including Great Britain, before a final decision is reached. In regard to treaties, the Irish Free State—as is so frequently the case—constitutes a partial exception. In 1931 Mr. Cosgrave advised the King to issue an Irish seal which might replace the Great Seal of the Realm for use on treaties; the King agreed, and the Irish seal may now be attached to treaties negotiated by the Free State on the advice of the Free State government tendered directly to the King without consultation with the British Ministers.[91]

INTERGOVERNMENTAL DISPUTES

While disputes between any member of the British Commonwealth and a foreign state are clearly recognized as disputes between sovereign states which can be submitted to the League or the Permanent Court, Great Britain has contended that disputes between members of the British Commonwealth are matters of exclusively intra-imperial concern.

On this important point, however, there is no unanimity within the Commonwealth. On September 15, 1929 the Irish Free State government signed without reservation the Optional Clause of the Permament Court protocol providing for compulsory arbitration.[92] Four days later Great Britain and the other Commonwealth states also signed the Optional Clause, but with a reservation to the effect that the jurisdiction of the Court did not extend to disputes between states members of the Commonwealth.[93] South Africa announced, however, that its acceptance of this reservation meant only that it preferred to settle intra-imperial disputes by special agencies, although, in its view, such disputes were justiciable by the Permanent Court. Canada took a similar position.[94] Thus, the contention of the Irish Free State that inter-Commonwealth disputes were international in character[96] was supported in

84. Cf. Hall, *The British Commonwealth of Nations*, cited, p. 263-270; Keith, *Dominion Autonomy in Practice*, cited, p. 46.

85. Keith, *Dominion Autonomy in Practice*, cited, p. 46. Closely connected with the problem of appeals to the Privy Council is the problem of a judicial body to settle intergovernmental disputes within the British Commonwealth.

86. The Irish Free State is at present a member of the Council.

87. *Balfour Report*, cited, p. 26-27. Canada, the Irish Free State, South Africa and Australia have accredited Ministers to a limited number of countries with which their relations are extensive. Cf. also, Keith, *Speeches and Documents on the Dominions*, cited, p. 349-351.

88. *Balfour Report*, cited, p. 22-24; 29-30; also Jebb, *The Empire in Eclipse*, cited, p. 82-114.

89. Imperial Conference, 1923, *Summary of Proceedings*, cited, p. 13-15; *Balfour Report*, cited, p. 22-24; 29-30.

90. Both South Africa and the Irish Free State claim the right to remain neutral in a war in which Great Britain is involved For the position of the former, cf. *Journal of the Parliaments of the Empire*, Vol. XI, No. 3, July 1930, p. 792-793; Article 49 of the Free State Constitution declares that: "Save in case of actual invasion, the Irish Free State shall not be committed to active participation in any war without the assent of the Oireachtas [Parliament]."

91. Subject, however, to the general understanding that a Commonwealth state will consult such of its fellow members as might be affected by a proposed treaty in advance of signature and ratification; cf. Elliott, *The New British Empire*, cited, Appendix VIII, p. 509-510; Keith, *Speeches and Documents on the Dominions*, cited, Introduction xxxvii-xxxviii.

92. Cf. Williams, "Great Britain and the Irish Free State," cited, p. 106. The Balfour Report had dealt with the matter negatively, recording a general agreement that none of the Commonwealth states should accept the compulsory jurisdiction of the Permanent Court without bringing up the matter for further discussion. (*Balfour Report*, cited, p. 28.)

93. Canada and Australia did not sign until September 21, 1929.

94. Elliott, "The Riddle of the British Commonwealth," cited, p. 454; *Journal of the Parliaments of the Empire*, Vol. XI, No. 3, July 1930, p. 835.

96. This contention was advanced by Mr. Cosgrave in 1924 when he registered the Anglo-Irish treaty of 1921 with the League of Nations despite the protest of the British government that the treaty was an *inter se* agreement, not an international treaty. Cf. Williams, "Great Britain and the Irish Free State," cited, p. 106.

principle by South Africa and Canada although both in practice supported Great Britain by agreeing to treat such disputes through special agencies created for the purpose.

The 1929 conference on legislation, which met soon after these events, consciously departed from its terms of reference to declare that it "felt that [its] work would be incomplete unless [it] gave some consideration to the question of the establishment of a tribunal as a means of determining differences and disputes between members of the British Commonwealth."[97] It recorded the prevailing view that a special tribunal should be created, and considered that it should take the form of an *ad hoc* body whose jurisdiction should be limited to disputes between governments. The Imperial Conference of 1930 accepted these recommendations, added that arbitration should be voluntary, determined the procedure for selecting a court of five members for any dispute, and specified that these members must be drawn from within the British Commonwealth.[98] Thus far, however, no *ad hoc* courts have been constituted.[99]

CONCLUSION

As a result of the constitutional developments since 1926, the British Commonwealth for most purposes may be regarded as a league of independent states. Yet the United Kingdom of Great Britain and Northern Ireland remains at the center and is the leader. In population the United Kingdom ranks first—not only ahead of any other Commonwealth state, but ahead of all the other Commonwealth states combined.[100] The United Kingdom, furthermore, is the principal money market for all the Dominions except the Irish Free State and Canada.[101] The former has floated no loans at all in Great Britain; but while the latter has turned to the New York money market since the World War, its indebtedness to British investors is still very large. Finally, while each Dominion is responsible for its own military establishment, all rely upon Great Britain for naval defense and the cost of this defense is borne by the British government alone.[102]

Historically the United Kingdom was at one time undisputed master of all the present Commonwealth states, and although this dominance is now defnitely of the past, a majority of the inhabitants in Canada, Newfoundland, Australia and New Zealand own Great Britain as their Mother Country. It is precisely where this is not the case—in South Africa and the Irish Free State—that the bonds of Commonwealth are weakest and demands for complete independence are most insistent.[103] In addition, the United Kingdom alone among the Commonwealth states is a great world power and a European power.[104] Furthermore, it is master of a great empire of dependent peoples—although some of the Dominions also have imperial interests.[105]

As a result of these factors it remains true, as the Balfour Report declared in 1926, that the major share of responsibility for defense and the general conduct of foreign policy, in so far as these are of imperial concern, "rests now, and must for some time continue to rest" with the British government.[106] This situation accounts in large measure for the success of the British government in maintaining a measure of unity within the Empire and in insisting on a recognized leadership in foreign affairs. For their part, the Dominions have secured recognition of their right to be consulted on any issues of foreign policy which might involve their fortunes as well as those of Great Britain. Throughout the new British Commonwealth of equal states—some not so certain that they want the large measure of independence for which others have clamored — the vital relationship is voluntary cooperation and the significant mechanism is consultation and agreement.

97. *Report of the 1929 Conference*, cited, p. 41.

98. Imperial Conference, 1930, *Summary of Proceedings*, cited, p. 22-24.

99. In the one dispute since 1930 which both parties declared suitable for arbitration—that between the Free State and Great Britain over annuities—the Free State would not accept a purely Commonwealth tribunal on the fundamental ground that such acceptance would imply a subordinate position for the Free State among the nations of the world, while the British government refused to accept a special court with a neutral chairman, as Mr. de Valera suggested, on the ground that this would raise an *inter se* dispute within the British Commonwealth to an international status. Cf. Williams, "Great Britain and the Irish Free State," cited, p. 105.

100. In 1931 the population of the United Kingdom was 44,932,884. (*Statesman's Year Book*, 1932, p. 11.) That of the Commonwealth states combined was approximately 28,400,000, of which slightly more than 5,400,000 was non-European population in South Africa. (*Ibid.*, p. 81, 229, 284, 331, 350, 408.)

101. The extent to which this is the case is indicated in the retention by the British government of the right of disallowance of Dominion legislation adversely affecting Dominion stocks admitted to trustee standing in the United Kingdom.

102. The Irish Free State has no naval establishment of any kind, while the other Dominions have only small naval forces. The Washington (1922) and London (1930) naval conferences treated these forces as part of those of the British Empire, making Great Britain responsible to the co-signers of the naval limitation treaties for whatever naval power might be possessed by the Dominions.

103. It is noteworthy that the twenty-six counties of the Irish Free State have themselves been a great motherland of the overseas Dominions and have contributed an element in the population in each of the Dominions which has been critical of the British connection.

104. While the Irish Free State might also be considered a European power, its recent development has been in the direction of self-containment and isolation.

105. Australia, New Zealand, South Africa and Newfoundland all control other areas than those comprised within their Dominion boundaries. For the most part these areas are Class C mandates administered under the League of Nations' Permanent Mandates Commission. (Cf. Elliott, *The New British Empire*, cited, p. 29-31.

106. *Balfour Report*, cited, p. 26-27.